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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|----------------------------|----------------------|-------------------------|------------------|
| 10/009,663 | 02/08/2002 | Colin Dunlop | GRIHAC P38AUS | 8376 |
| 20210 | 7590 05/03/200 | 6 | EXAMINER | |
| DAVIS & BUJOLD, P.L.L.C. FOURTH FLOOR | | | FOREMAN, JONATHAN M | |
| | TELOOR OMMERCIAL STREET | | ART UNIT | PAPER NUMBER |
| MANCHESTER, NH 03101-1151 | | | 3736 | |
| | | | DATE MAILED: 05/03/2006 | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | T | | | | | |
|--|---|---|--|--|--|--|--|
| | Application No. | Applicant(s) | | | | | |
| | 10/009,663 | DUNLOP, COLIN | | | | | |
| Office Action Summary | Examiner | Art Unit | | | | | |
| | Jonathan ML Foreman | 3736 | | | | | |
| The MAILING DATE of this communication app Period for Reply | pears on the cover sheet with the | correspondence address | | | | | |
| A SHORTENED STATUTORY PERIOD FOR REPL' WHICHEVER IS LONGER, FROM THE MAILING D. Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication. If NO period for reply is specified above, the maximum statutory period of Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b). | ATE OF THIS COMMUNICATIO 36(a). In no event, however, may a reply be ti will apply and will expire SIX (6) MONTHS from a. cause the application to become ABANDONI | N. mely filed n the mailing date of this communication. ED (35 U.S.C. § 133). | | | | | |
| Status | | | | | | | |
| 1) Responsive to communication(s) filed on 16 F | ebruary 2006. | | | | | | |
| , | | | | | | | |
| | Since this application is in condition for allowance except for formal matters, prosecution as to the merits is | | | | | | |
| closed in accordance with the practice under E | Ex parte Quayle, 1935 C.D. 11, 4 | .53 O.G. 213. | | | | | |
| Disposition of Claims | | | | | | | |
| 4) Claim(s) 101-166 is/are pending in the application. | | | | | | | |
| 4a) Of the above claim(s) is/are withdra | 4a) Of the above claim(s) is/are withdrawn from consideration. | | | | | | |
| 5) Claim(s) is/are allowed. | | | | | | | |
| | Claim(s) is/are rejected. | | | | | | |
| 7) Claim(s) is/are objected to. | der alaction requirement | | | | | | |
| 8)⊠ Claim(s) <u>101-166</u> are subject to restriction and | a/or election requirement. | | | | | | |
| Application Papers | | | | | | | |
| 9) The specification is objected to by the Examine | | | | | | | |
| 10)☐ The drawing(s) filed on is/are: a)☐ acc | | | | | | | |
| Applicant may not request that any objection to the | | | | | | | |
| Replacement drawing sheet(s) including the correct | | | | | | | |
| 11) The oath or declaration is objected to by the E | xaminer. Note the attached Offic | e Action of form P10-132. | | | | | |
| Priority under 35 U.S.C. § 119 | | | | | | | |
| 12) Acknowledgment is made of a claim for foreigr a) All b) Some * c) None of: | n priority under 35 U.S.C. § 119(a | a)-(d) or (f). | | | | | |
| Certified copies of the priority documen | | | | | | | |
| 2. Certified copies of the priority documen | | | | | | | |
| 3. Copies of the certified copies of the price | | ved in this National Stage | | | | | |
| application from the International Burea | | /ed | | | | | |
| * See the attached detailed Office action for a list | t of the certified copies not receive | reu. | | | | | |
| Attachment(s) | » — | (DTO 412) | | | | | |
| 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) | 4) Interview Summa Paper No(s)/Mail | Date | | | | | |
| 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08 Paper No(s)/Mail Date | 5) Notice of Informal 6) Other: | Patent Application (PTO-152) | | | | | |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to more than one species of the generic invention.

These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Embodiment I related to monitoring the motion of the head, limbs and trunk of a patient, and respiratory motion of the patient for use as an indication of patient arousal; and Embodiment II related to monitoring the motion of the head, limbs and trunk of a patient, and respiratory motion of the patient for use as an indication of patient painfulness.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

2. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the common technical feature present in Embodiment I and Embodiment II is monitoring the motion of the head, limbs and trunk of a patient, and respiratory

motion of the patient. However, because such a feature is known (See US Patent No. 5,846,206 to Bader), it is not a technical feature that defines a contribution over the prior art. Therefore, there is no corresponding special technical feature between Embodiment I and Embodiment II.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IMLF

MOX F. HINDENBURG

Y DATEST EXAMINE